



CDIAC HOSTS KEYS TO GOOD DISCLOSURE SYMPOSIUM

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The California Debt and Investment Advisory Commission (CDIAC), National Federation of Municipal Analysts (NFMA), and Standard & Poor's co-sponsored a seminar entitled *Keys to Good Disclosure: A Municipal Securities Regulations Symposium* on February 27th at the Bank of America Center in San Francisco. This symposium provided an overview of the key compliance issues surrounding continuing disclosure in today's changing environment and how to institute effective continuing disclosure. Three panels discussed continuing disclosure compliance issues, how to disclose information to the market, and electronic disclosure.

Continuing Disclosure Compliance Issues

This session focused on the results of recent surveys regarding continuing disclosure practices among municipal issuers. It discussed the key issues and problems identified and provided general discussion of potential methods for ensuring good continuing disclosure. The moderator was Lynnette Kelly Hotchkiss, Senior Vice President and Associate General Counsel with The Bond Market Association. Panelists included Martha Mahan Haines, Chief, Office of Municipal Securities, Securities and Exchange Commission (SEC); Peter Bianchini, past Chairman of the NFMA and Vice President with Charles Schwab; and Lisa M. Harris, Executive Director with CDIAC.

Martha Mahan Haines discussed a number of issues including a study of the Nationally Recognized Municipal Securities Information Repositories (NRMSIRs), various continuing disclosure reminder systems, and the Municipal Disclosure Cover Sheet. Ms. Haines stated that the study of the NRMSIR system confirms suspicions that problems exist with the system. The study found that certain issuers are not filing required continuing disclosure documents and are filing with too few NRMSIRs. Also, the NRMSIRs' filing systems could be improved to ensure greater accuracy of information collected.

Ms. Haines suggested that one possible improvement to the disclosure system would be the implementation of an electronic post office. Issuers would send all of their disclosure information to this single location. All of the NRMSIRs would, in turn, receive an identical set of information from the post office. Another means of improving disclosure would be the development of a continuing

disclosure reminder ("tickler") system. Ms. Haines encouraged financial advisors and bond counsels to act as the tickler system for their clients. She also informed the audience that two states (Florida and Texas) have set up tickler systems for their issuers.

Ms. Haines then described the Municipal Disclosure Cover Sheet, which gives NRMSIRs the basic information they need to file disclosure information correctly. Such information includes the Committee on Uniform Security Identification Procedures (CUSIP) number for the issue. Ms. Haines is encouraging issuers to have CUSIP numbers printed in official statements (OSs). If issuers do not know their CUSIP numbers, they can currently call the CUSIP Service Bureau for their numbers and, in the future, will be able to use an on-line database to get this number. See page 9 of this issue of *DEBT LINE* or visit www.bondmarkets.com to obtain a copy of the cover sheet.

The next speaker, Peter Bianchini, stated that, as an institutional investor, he believes the current disclosure system needs to be improved. Issuers should have a vested interest in improving disclosure because bad disclosure may lead to higher interest rates paid on subsequent deals, as investors seek to be compensated for the risk they are assuming for poorly disclosed issues. Anecdotally, Mr. Bianchini said that if Charles Schwab cannot find financial documents on bonds, they will not buy them.

Mr. Bianchini also discussed the NFMA survey on municipal disclosure. The survey, which focused on one NRMSIR, determined that 41 percent of issuers did an inadequate or substantially inadequate job of filing with the NRMSIR. In addition, NFMA's survey found that 26 percent of issuers took longer than 180 days to file. Combining the SEC and NFMA survey results, Mr. Bianchini found that, overall, 57 percent of issuers had filed insufficient information for an investor to conduct a complete analysis of their financial condition.

Mr. Bianchini suggested a number of methods for improving municipal disclosure, including initiating a centralized post office or repository, adhering to NFMA's *Recommended Best Practices*, using cover pages with CUSIP numbers, providing contact information, holding investor/

analyst calls, and using the issuer's web site to provide disclosure information.

Lisa M. Harris discussed CDIAC's recent continuing disclosure survey of California issuers. The CDIAC survey of California issuers indicates stronger compliance with disclosure regulations than the SEC survey of issuers nationwide. CDIAC sent questionnaires to 221 recent issuers and received responses from 73 issuers. Eighty percent of respondents acknowledged that they were supposed to have filed under SEC Rule 15c2-12, and 75 percent reported filing at all four NRMSIRs. Most respondents indicated that they do not use electronic means to transmit information to either NRMSIRs or to dissemination agents. Only 30 percent of respondents were aware of the Municipal Disclosure Cover Sheet, and only half knew their own CUSIP numbers for reportable issues. Twenty-nine percent of respondents put CUSIP numbers on continuing disclosure filings, and 25 percent put CUSIP numbers on their OSs.

Regarding the continuing disclosure reminder system, Ms. Harris stated that most issuers use an internal tickler system. Most respondents found the use of a centralized NRMSIR or the use of a web site as the best "fixes" for the current system's problems.

How to Disclose Information to the Market

This session focused on how good continuing disclosure is dependent on the process implemented. The panel was created to bring about best practices for on-going disclosure. The moderator was Lisa Zuckerman, Director with Standard and Poor's. Panelists included Richard Hiscocks, Partner with Orrick Herrington & Sutcliffe; Monique Moyer, Director of Public Finance, City and County of San Francisco and Chair of the Government Finance Officers Association Governmental Debt and Fiscal Policy Committee; and Keith Dickinson, Treasurer at Sutter Health.

Richard Hiscocks began the session with a discussion of the five "W's" of disclosure: who, what, when, where, and why. He mentioned that the person who usually takes care of disclosure responsibilities with the issuer resides in the finance department. Mr. Hiscocks believes that the person who ends up with disclosure responsibility should have access to the people and facts needed to get the information out. He said that the financial markets depend on this information to make their decisions and recommended that issuers be proactive to maintain and enhance the issuer's reputation.

Mr. Hiscocks stated that to satisfy continuing disclosure requirements, an issuer should read all continuing disclosure agreements, read SEC Rule 15c2-12, and prepare a checklist of disclosure documents that are required and when they are required. In addition, an issuer should be ready to disclose material events (the 11 specific events are specified in SEC Rule 15c2-12) and report those to the NRMSIRs when they occur. Lastly, Mr. Hiscocks stated that issuers should have a bias towards over-reporting information.

Mr. Hiscocks said that the universe of NRMSIRs is subject to change (the current list of NRMSIRs and state depositories is posted on the SEC's web site at www.sec.gov/info/nrmsir.htm). In addition to filing with the NRMSIRs, Mr. Hiscocks also reminded the audience that issuers sometimes are contractually required to file with others that are legally entitled to it (e.g., rating agencies) or who have requested it (e.g., financial advisors, underwriters, or investors). He suggested that the issuer maintain an address list of entities that require disclosure documents that can be updated easily and accessed promptly.

The next speaker, Monique Moyer, provided an issuer's perspective on disclosure from the deals that she has worked on throughout her tenure as the Director of Public Finance for the City and County of San Francisco. Ms. Moyer believes it is the issuer's responsibility to disclose as a result of being fiduciaries of the public trust. Ms. Moyer offered a few tips to issuers:

- Try to use the disclosure systems that are in place from previous deals.
- Make clear the sources of information in disclosure documents.
- Create an inbox of disclosure material.
- Talk to the auditors in advance.
- Assign a proofreader for the documents.
- Set realistic timeframes for the annual reporting requirement.
- Use CUSIP numbers whenever possible.
- Consider hiring a dissemination agent.

The final panel speaker, Keith Dickinson, gave his perspective on continuing disclosure from the perspective of a non-profit issuer. Mr. Dickinson said that one key to a successful transaction is communication with bondholders. He also believes that the more disclosure the better. To enable more uniform disclosure to the market place, Sutter Health requires people who ask for information to leave an email address. This email address is put into an address book that is used to send mass mailings of pertinent information to the entire marketplace at once. Lastly, he said that if there is an event that might be considered a material event, issuers should discuss the event with bond counsel.

Electronic Disclosure

The final session of the program focused on the use of electronic disclosure as a method to promote transparency, liquidity, and efficiency in the capital markets. The session was designed to provide discussion of electronic disclosure issuers, potential problems, and possible solutions and applications. The moderator was Kenneth Kurtz, Director with Moody's Investor Services. Panelists included Rafael Costas, Co-director, Municipal Bond Department, Franklin Templeton Investments; Jim Olson, Comptroller with California Department of Water Resources (DWR); and Frank Moore, Research Specialist with CDIAC.

Rafael Costas gave his perspective as the largest institutional investor in California municipal bonds. Mr. Costas said that it is important to have good secondary market disclosure because issuers come to the market more often than they think they will. Mr. Costas believes that the Internet is a more universal medium than the NRMSIR system, with the benefits of being a low-cost alternative. Electronic disclosure allows Franklin Fund to receive financial information directly from the issuing entity.

Mr. Costas displayed a wish list that he derived enumerating a number of ideal things that investors would like to see on an issuer web site. The list included offering documents for all bonds, financial documents (such as historical audits, comprehensive annual financial reports [CAFRs], quarterly reports, and fund balances), historical operating data, and virtual tours/photos of the project being financed. In addition, anything submitted to NRMSIRs ideally should be added to or linked to the issuer's web site. Also, issuers should consider adding a frequently asked question (FAQ) section of their web site.

The next speaker, Jim Olson, described the electronic disclosure process for the State's energy bonds that were issued in November 2002 in response to the energy crisis. For initial disclosure, the long-term power contracts were available on the web site. Preliminary official statements (POSs) were posted on the State Treasurer's Office (STO) web site and on E-Muni's web site (an organization that provides financial information for municipal issuers). Mr. Olson said DWR's web site used disclaimer language that users had to go through and certify that they understood that they were leaving DWR's web site before going to third-party web sites, like STO's.

For continuing disclosure, Mr. Olson stated that DWR's bond indenture requires disclosure reports to be sent to the NRMSIRs within 120 days after the end of the fiscal year for audited financial statements and within 45 days for quarterly financial statements. These documents also are posted to DWR's web site. Material events are required to be disclosed promptly, according to the continuing disclosure certificate.

The final speaker, Frank Moore, reported on his ongoing research in the broad area of municipal disclosure and addressed two electronic disclosure surveys and an Issue Brief he published in the last year. Mr. Moore said that an article in the June 2001 *DEBT LINE* publication discussed a CDIAC survey of STO's web site as well as the web sites of

all of the State's 58 counties and the ten largest cities. The survey found a number of practices that could be improved upon, such as posting of outdated or unaudited information and omitting material event notices. However, the survey also noted several practices that may clarify the use of information for potential investors including using disclaimers and separating information on their web site.

Mr. Moore discussed a follow-up survey, the results of which appeared in the January 2002 edition of *DEBT LINE*. He sent a standardized set of five questions to counties and cities gauging their usage and perceptions of electronic disclosure practices. The overwhelming majority of respondents stated that they have not implemented electronic disclosure. Mr. Moore found that, in general, a greater percentage of counties implemented electronic disclosure than did cities. No county or city posted material event notices, although seven of the nine cities reported material events to DPC Data (one of the NRMSIRs). The survey also noted that the leading barriers to implementing electronic disclosure for both cities and counties are technical (that is, not enough information technology staff). Surprisingly, the least cited barrier to implementing electronic disclosure was regulatory. For those respondents who said that they did have regulatory concerns, hyperlinking from a web site was the greatest regulatory issue preventing the implementation of electronic disclosure.

Mr. Moore also discussed CDIAC's Issue Brief on SEC disclosure requirements and ways issuers utilize electronic disclosure. The Issue Brief summarizes the SEC *Interpretation on the Use of Electronic Media* and gives a number of recommendations that issuers should consider. The Issue Brief had a number of recommendations including that issuers should consider establishing an investor relations program with a single contact person or unit. Mr. Moore also suggested that an issuer should establish separate electronic disclosure and historical information sections on their web sites. Issuers should consider posting documents in both HTML and PDF formats. Posting PDF documents alone may result in significant costs to the issuer if it is required to provide technical support to investors trying to download documents. Lastly, the report recommended that issuers consider using disclaimers/portals screens or eliminating hyperlinks altogether to avoid confusion between the issuer's and third-party web sites.

For information on upcoming CDIAC seminars, visit CDIAC's web site at www.treasurer.ca.gov/cdiac or contact CDIAC at (916) 653-3269.

This Offprint was previously published in DEBT LINE, a monthly publication of the California Debt and Investment Advisory Commission (CDIAC). CDIAC was created in 1981 to provide information, education, and technical assistance on public debt and investment to state and local public officials and public finance officers. DEBT LINE serves as a vehicle to reach CDIAC's constituents, providing news and information pertaining to the California municipal finance market. In addition to topical articles, DEBT LINE contains a listing of the proposed and final sales of public debt provided to CDIAC pursuant to Section 8855(g) of the California Government Code. Questions concerning the Commission should be directed to CDIAC at (916) 653-3269 or, by e-mail, at cdiac@treasurer.ca.gov. For a full listing of CDIAC publications, please visit our website at <http://www.treasurer.ca.gov/cdiac>.

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Municipal Secondary Market Disclosure Information Cover Sheet

This cover sheet should be sent with all submissions made to the Municipal Securities Rulemaking Board, Nationally Recognized Municipal Securities Information Repositories, and any applicable State Information Depository, whether the filing is voluntary or made pursuant to Securities and Exchange Commission Rule 15c2-12 or any analogous state statute.

See www.sec.gov/info/municipal/nrmsir.htm for list of current NRMSIRs and SIDs.

IF THIS FILING RELATES TO A SINGLE BOND ISSUE:

Provide name of bond issue exactly as it appears on the cover of the Official Statement
(please include name of state where issuer is located):

Provide nine-digit CUSIP* numbers if available, to which the information relates:

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IF THIS FILING RELATES TO ALL SECURITIES ISSUED BY THE ISSUER OR ALL SECURITIES OF A SPECIFIC CREDIT OR ISSUED UNDER A SINGLE INDENTURE:

Issuer's Name (please include name of state where Issuer is located): _____

Other Obligated Person's Name (if any): _____
(Exactly as it appears on the Official Statement Cover)

Provide six-digit CUSIP* number(s) if available, of Issuer: _____

*(Contact CUSIP's Municipal Disclosure Assistance Line at 212.438.6518 for assistance with obtaining the proper CUSIP numbers.)

TYPE OF FILING:

☐ Electronic (number of pages attached) _____ ☐ Paper (number of pages attached) _____

If information is also available on the Internet, give URL: _____

WHAT TYPE OF INFORMATION ARE YOU PROVIDING? (Check all that apply)

A. ☐ Annual Financial Information and Operating Data pursuant to Rule 15c2-12

(Financial information and operating data should not be filed with the MSRB.)

Fiscal Period Covered: _____

B. ☐ Audited Financial Statements or CAFR pursuant to Rule 15c2-12

Fiscal Period Covered: _____

C. ☐ Notice of a Material Event pursuant to Rule 15c2-12 (Check as appropriate)

- | | |
|--|--|
| 1. <input type="checkbox"/> Principal and interest payment delinquencies | 6. <input type="checkbox"/> Adverse tax opinions or events affecting the tax-exempt status of the security |
| 2. <input type="checkbox"/> Non-payment related defaults | 7. <input type="checkbox"/> Modifications to the rights of security holders |
| 3. <input type="checkbox"/> Unscheduled draws on debt service reserves reflecting financial difficulties | 8. <input type="checkbox"/> Bond calls |
| 4. <input type="checkbox"/> Substitution of credit or liquidity providers, or their failure to perform | 9. <input type="checkbox"/> Defeasances |
| 5. <input type="checkbox"/> Substitution of credit or liquidity providers, or their failure to perform | 10. <input type="checkbox"/> Release, substitution, or sale of property securing repayment of the securities |
| | 11. <input type="checkbox"/> Rating changes |

D. ☐ Notice of Failure to Provide Annual Financial Information as Required

E. ☐ Other Secondary Market Information (Specify): _____

I hereby represent that I am authorized by the issuer or obligor or its agent to distribute this information publicly:

Issuer Contact:

Name _____ Title _____

Employer _____

Address _____ City _____ State _____ Zip Code _____

Telephone _____ Fax _____

Email Address _____ Issuer Web Site Address _____

Dissemination Agent Contact, if any:

Name _____ Title _____

Employer _____

Address _____ City _____ State _____ Zip Code _____

Telephone _____ Fax _____

Email Address _____ Relationship to Issuer _____

Obligor Contact, if any:

Name _____ Title _____

Employer _____

Address _____ City _____ State _____ Zip Code _____

Telephone _____ Fax _____

Email Address _____ Issuer Web Site Address _____

Investor Relations Contact, if any:

Name _____ Title _____

Telephone _____ Email Address _____